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8 *Attorney for Defendant, Jan Rouven Fuechtener*

7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 vs.

12 JAN ROUVEN FUECHTENER,

13 Defendant.

**2:16-cr-00100-GMN-CWH**

14  
15 **RESPONSE TO GOVERNMENT'S MOTION TO STRIKE A PORTION OF**  
16 **DEFENDANT'S CLOSING BRIEF IN SUPPORT OF HIS MOTION TO WITHDRAW**  
17 **HIS GUILTY PLEA #266**

18 Citing no legal authority in support of its request, the Government has moved to strike a  
19 portion of Rouven's closing brief because it does not like his argument made and based upon the  
20 testimony of witnesses and behavior of the government during the hearing, that it appears that the  
21 government may have breached its duty of good faith and fair dealing in terms of the guilty plea  
22 agreement prepared in this matter. The Government argues that Rouven should be precluded from  
23 making this argument which revealed itself during the multi day evidentiary hearing, because it was  
24 not raised prior to the hearing.

25 The purpose of the evidentiary hearing was to determine whether or not there were valid  
26 reasons to permit Rouven to withdraw his guilty plea; to flush out/develop the facts and  
27 circumstances surrounding the guilty plea. It should be noted, defense attorneys do not have the  
28 power and might of the Government with FBI agent in tow, to compel somewhat recalcitrant  
witnesses to answer "uncomfortable" questions upon demand, prior to being summoned into court

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and being forced to answer such questions under oath. That being said, after days of testimony from witnesses about how the plea came about, including the fact that the government unilaterally determined which facts were included in the agreement presented to defense counsel for the first time at approximately 10:00 AM on the morning of November 17, 2016 ; taken in conjunction with the government's words during the plea colloquy when Rouven dared to question some of the facts in the guilty plea - he must "*admit to all the factual allegations as set forth in the plea agreement, the government is prepared to proceed with trial*" TR 11/17/201 p. 35; and after days of observing the Government's conduct, including the extraordinary lengths to which it went to try to attack Rouven's credibility, not limited to its laborious cross examination about relatively inconsequential matters, including pleadings filed by his lawyer; it became evident that government may have breached its duty of good faith and fair dealing in plea bargaining. See, Santobello v. New York, 404 U.S. 257, 262 (1971) This was a theory that raised its ugly head as a result of the evidentiary hearing. Consequently, in his closing brief, Rouven properly raised this point for the court's consideration.

DATED this 5<sup>th</sup> day of June 2018.

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/s/ Karen A. Connolly  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of Karen A. Connolly, Ltd. A copy of the foregoing was served upon counsel of record, via Electronic Case Filing (ECF).

DATED this 5<sup>th</sup> day of June, 2018.

/s/ Shaeley Pilayo  
Employee of Karen A. Connolly, Ltd.

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